

Message Text

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ACTION EUR-10

INFO OCT-01 IO-03 ISO-00 EURE-00 SSO-00 NSCE-00 USIE-00

INRE-00 AEC-05 CIAE-00 H-01 INR-10 L-02 NSAE-00

OIC-01 OMB-01 PA-01 PM-03 PRS-01 SAJ-01 SAM-01 SP-02

SS-14 TRSE-00 RSC-01 NSC-07 ACDA-10 DRC-01 AECE-00

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FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 5571

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION BERLIN

USMISSION NATO BRUSSELS

USMISSION GENEVA IMMEDIATE

C O N F I D E N T I A L SECTION 01 OF 02 BONN 16015

GENEVA FOR CSCE DEL

E.O. 11652: GDS

TAGS: PFOR, CSCE, PGOV, WB, GE, GW, FR, UK, UR, US

SUBJECT: CSCE: FOUR POWER RIGHTS

REF: 1) GENEVA 6303; 2) STATE 178602; 3) BONN 12710

SUMMARY: TWO DAYS AGO, FRENCH EMBASSY HERE FORMALLY INFORMED US OF DUTCH PROPOSAL IN EC NINE CONTEXT TO PROVIDE NEW LANGUAGE FOR PROTECTION OF QUADRIpartite RIGHTS AND RESPONSIBILITIES (QRRS), MARKEDLY DIFFERENT FROM THAT WHICH BONN GROUP HAD WORKED OUT AND FOUR CAPITALS HAD APPROVED LAST AUGUST (REFTELS). FRENCH ASKED US SIDE TO PARTICIPATE IN BONN GROUP EXERCISE TO COMMENT ON DUTCH PROPOSAL, FOR USE BY FRENCH, UK (AND CONFIDENTIAL

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POSSIBLY FRG) DELEGATIONS IN EC NINE'S DELIBERATIONS ON

CSCE MATTERS IN GENEVA OCTOBER 10-11. BONN GROUP
PREPARED COMMENTARY ON THE DUTCH LANGUAGE, TEXT OF
WHICH IS AS FOLLOWS: "NOTHING IN THE PRESENT DECLARA-
TION WILL BE CONSTRUED IN A WAY THAT WOULD AFFECT THE
RIGHTS HELD BY THE PARTICIPATING STATES UNDER INTER-
NATIONAL AGREEMENTS VALID UNDER THE GENERALLY RECOGNIZED
PRINCIPLES OF INTERNATIONAL LAW." THIS COMMENTARY,
CONTAINED IN FOLLOWING PARAS, IS DESIGNED FOR USE AS
GUIDELINES BY THE FOUR DELEGATIONS IN GENEVA, SUBJECT
TO CAPITALS' APPROVAL. END SUMMARY

1. BEGIN TEXT. THE PROPOSAL FOR ARTICLE 10 OF THE
DECLARATION ON PRINCIPLES PRESENTED BY THE DUTCH
DELEGATION HAS BEEN STUDIED BY THE BONN GROUP, WHICH HAS
COME UP WITH THE FOLLOWING COMMENTS.

I. ANALYSIS

THE DUTCH FORMULATION APPEARS POORLY ADAPTED TO
THE DOUBLE OBJECTIVE SOUGHT BY ITS AUTHORS, I.E. TO
PROTECT THE QUADRIPARTITE RIGHTS AND RESPONSIBILITIES
FOR BERLIN AND GERMANY AS A WHOLE AND TO REDUCE THE
SIGNIFICANCE UNDER INTERNATIONAL LAW OF THE AGREEMENTS
CONCLUDED BY THE USSR ON THE BASIS OF THE BREZHNEV
DOCTRINE.

THE PRINCIPAL OBJECTIONS OF THE BONN GROUP HAVE
TO DO WITH THE FOLLOWING EXPRESSIONS CONTAINED IN THE
DUTCH PROPOSAL:

L) "RIGHTS HELD BY THE PARTICIPATING
STATES UNDER INTERNATIONAL AGREEMENTS". OUR QUADTIPAR-
TITE RIGHTS AND RESPONSIBILITIES DO NOT RESULT ONLY
FROM INTERNATIONAL AGREEMENTS OR ARRANGEMENTS. THERE
ARE ORIGINAL RIGHTS STEMMING FROM THE QUALITY OF THE
CONQUERING POWERS, CERTAIN OF WHICH ARE CONTAINED IN
AGREEMENTS OR ARRANGEMENTS; HOWEVER, A NUMBER OF THESE
RIGHTS HAVE NEVER BEEN COMMITTED TO WRITING.

2) "VALID UNDER THE GENERALLY RECOGNIZED
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PROPOSALS AND RULES OF INTERNATIONAL LAW".

IF THIS LANGUAGE IS DESIGNED TO OPPOSE
EASTERN ARGUMENTS ABOUT THE VALIDITY IN INTERNATIONAL
LAW OF THE BREZHNEV AGREEMENTS, IT ADDS NOTHING TO THE
EXPRESSION "IN CONFORMITY WITH INTERNATIONAL LAW"
CONTAINED IN THE FRENCH PROPOSAL. (FYI: THE FRENCH
PROPOSAL REFERRED TO HERE IS THE ORIGINAL BONN GROUP

LANGUAGE CONTAINED IN BONN 12710. THE FRENCH TABLED THE LANGUAGE IN THE EC NINE, HENCE ITS IDENTIFICATION AS THE FRENCH PROPOSAL. END FYI.) BUT THIS LANGUAGE, INSOFAR AS IT MAKES THE VALIDITY OF THE RIGHTS OF THE PARTICIPATING STATES DEPEND ON INTERNATIONAL AGREEMENTS (SEE PARA 1) BINDING WITH REGARD TO THE PRINCIPLES AND RULES OF INTERNATIONAL LAW, RUNS CONTRARY TO WESTERN INTERESTS. IN FACT, A NUMBER OF QUADRIPARTITE RIGHTS ARE OUTSIDE THE SCOPE OF INTERNATIONAL LAW. THE GOAL OF THE QUADRIPARTITE DECLARATION (NOV. 72) WAS PRECISELY TO PREVENT, IN ADVANCE, AN EVENTUAL ARGUMENT IN THIS

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 16015

DIRECTION BY THE GDR.

3) "CONSTRUED"

IT WOULD BE UNACCEPTABLE TO SUGGEST THAT THE DECLARATION ON PRINCIPLES COULD BY ITS INTERPRETATION PERMIT BRINGING INTO QUESTION QUADRIpartite RIGHTS, EVEN IF ONLY INDIRECTLY. THIS IS THE SENSE OF THE DUTCH PROPOSAL, WHICH OPENS A POSSIBILITY TO BRING INTO DOUBT, ON THE BASIS OF AN ARGUMENT ABOUT PRINCIPLES, THE EXISTENCE AND LEGALITY OF AT LEAST CERTAIN QUADRIpartite RIGHTS AND RESPONSIBILITIES. SUCH A FORMULATION WOULD LEAD, IN FACT, TO THE REINTRODUCTION OF THE CONCEPT OF "THE QUESTION OF QUADRIpartite RIGHTS" WHICH THE EXERCISE WAS DESIGNED PRECISELY TO AVOID.

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II. CONSEQUENCES OF THE DUTCH PROPOSAL

THIS PROPOSAL COULD GIVE RISE TO AN INTERPRETATION ACCORDING TO WHICH BILATERAL AGREEMENTS CONCLUDED BY THE FRG WITH THE EASTERN COUNTRIES AND THE SOVIET/GDR TREATY WOULD HAVE AN OVERRIDING VALIDITY WITH REGARD TO QUADRIpartite RIGHTS IN GERMANY. IT WOULD OPEN THE DOOR TO POSSIBLE EAST GERMAN CONTENTIONS ABOUT THE "LEGALITY" OF CERTAIN ALLIED RIGHTS. IT COULD PERMIT THE GDR TO CLAIM THAT IT IS UNAFFECTED BY THE QUADRIpartite AGREEMENT AND QUADRIpartite DECLARATION AND PERHAPS EVEN BY THE AGREEMENTS, DECISIONS AND PRACTICES CONFIRMED IN THESE DOCUMENTS. THE ELIMINATION OF THE EXPRESSION "WHICH CONCERN THEM" FROM THE FRENCH PROPOSAL, TAKEN TOGETHER WITH THE RISKS LISTED ABOVE, WOULD CONFER IN EFFECT UPON THE GDR THE POSSIBILITY TO TAKE THE INITIATIVE TO CONTEST THESE RIGHTS. THIS WOULD THEREUPON LEAVE THE THREE WESTERN ALLIES IN THE POSITION OF PROVING THE PERMANENCE AND REALITY OF THESE RIGHTS.

III. TACTICAL CONSIDERATIONS

IT IS PROBABLE THAT THE RUSSIANS WILL MORE EASILY ACCEPT A FORMULATION REPRODUCING THE EXPRESSIONS WHICH THEY HAVE ALREADY ACCEPTED IN THE QUADRIpartite DECLARATION THAN AN ENTIRELY NEW AND PROVOCATIVE FORMULA. ON THE FACE OF IT, IT SEEMS OUT OF THE QUESTION THAT THE RUSSIANS COULD ACCEPT THE DUTCH PROPOSAL.

IV. CONCLUSION

THE BONN GROUP CONSIDERS THAT THE DUTCH

FORMULATION IS UNACCEPTABLE FOR THE PROTECTION OF THE
QUADRIpartite RIGHTS AND RESPONSIBILITIES AND RECOMMENDS
RETAINING THE FORMULATION WHICH WAS ACCEPTED BY THE
FOUR WESTERN CAPITALS IN AUGUST 1974. END TEXT

2. COMMENT: WE INFORMED THE OTHER BONN GROUP REPS THAT
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WE WOULD PARTICIPATE IN PREPARATION OF QUADRIpartite
COMMENTARY, ALTHOUGH IT WOULD BE USED BY ONLY THREE IN
THE EC NINE CONTEXT. WE STATED THAT WE WOULD NOT
RECOMMEND ANY ACTION BY US DEL IN GENEVA AT THIS POINT,
BUT WOULD RECOMMEND ITS AWAITING THE RESULT OF THE
OCTOBER 10-11 EC CONSULTATIONS. IF, AS A RESULT OF THE
UK-FRENCH-FRG PRESSURE, THE DUTCH DROPPED THEIR PROPOSAL,
THEN WE WOULD TAKE NO ACTION. IF DUTCH PERSISTED,
HOWEVER, WE WOULD RECOMMEND OUR DELEGATION'S WEIGHING
IN ALONG LINES OF BONN GROUP-PROPOSED PAPER, AT A TIME
AND PLACE OF THE DELEGATION'S CHOOSING.

3. ACTION REQUESTED. DEPARTMENT APPROVAL OF BONN
GROUP COMMENTARY AND APPROVAL OF APPROACH OUTLINED IN
PARA 3 ABOVE.
HILLENBRAND

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